

1 BARRY E. HINKLE, Bar No. 071223
2 NICOLE M. PHILLIPS, Bar No. 203786
3 CONCEPCIÓN E. LOZANO-BATISTA, Bar No. 227227
WEINBERG, ROGER & ROSENFELD
3 A Professional Corporation
1001 Marina Village Parkway, Suite 200
4 Alameda, CA 94501-1091
Telephone (510) 337-1001
5 Facsimile (510) 337-1023

6 Attorneys for Plaintiffs

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 KEN WALTERS and JOHN BONILLA, in their) No. C 04 – 04993 (JL)
12 respective capacities as Trustees of the OPERATING)
13 ENGINEERS HEALTH AND WELFARE TRUST)
14 FUND FOR NORTHERN CALIFORNIA; BOARD)
15 OF TRUSTEES OF THE PENSION TRUST FUND)
16 FOR OPERATING ENGINEERS; BOARD OF)
17 TRUSTEES OF THE PENSIONED OPERATING)
18 ENGINEERS HEALTH AND WELFARE FUND;)
19 BOARD OF TRUSTEES OF THE OPERATING)
20 ENGINEERS AND PARTICIPATING)
21 EMPLOYERS PRE-APPRENTICESHIP,)
22 APPRENTICE AND JOURNEYMEN)
23 AFFIRMATIVE ACTION TRAINING FUND;)
24 BOARD OF TRUSTEES OF THE OPERATING)
25 ENGINEERS VACATION AND HOLIDAY PLAN,)
26
27 Plaintiffs,)
28)
29 v.) Date: January 11, 2005
30) Time: 9:30 a.m.
31) Place: Courtroom F, 15th Floor
32)
33 Defendant.)
34)
35)

36 TO: James S. Pelletier, Diamond Oaks Construction Company, Inc.

37 **YOU ARE HEREBY ORDERED TO APPEAR** personally before Magistrate Judge
38 James Larson on Wednesday, January 11, 2005, at 9:30 a.m. in Courtroom F, 15th Floor, located at
450 Golden Gate Avenue, San Francisco, California, to furnish information to aid in enforcement
of the judgment entered against you on June 30, 2005 and to answer questions concerning property

1 in your possession or control as stated in Plaintiffs' Application for Order to Appear for Debtor
2 Examination, attached hereto as Exhibit "A". Also attached hereto as Exhibit "B" is a copy of the
3 Order for Appearance and Examination of Debtor Assets signed on November 30, 2005 by District
4 Judge Jeffrey S. White.

5 Dated: January 13, 2006

6 107622/403930



EXHIBIT A

1 BARRY E. HINKLE, Bar No. 071223
2 NICOLE M. PHILLIPS, Bar No. 203786
3 CONCEPCIÓN E. LOZANO-BATISTA, Bar No. 227227
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6 | Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10 KEN WALTERS and JOHN BONILLA, in their) No. C 04 - 04993 (FMS)
11 respective capacities as Trustees of the)
12 OPERATING ENGINEERS HEALTH AND)
13 WELFARE TRUST FUND FOR NORTHERN)
14 CALIFORNIA; BOARD OF TRUSTEES OF)
15 THE PENSION TRUST FUND FOR)
16 OPERATING ENGINEERS; BOARD OF)
17 TRUSTEES OF THE PENSIONED)
18 OPERATING ENGINEERS HEALTH AND)
19 WELFARE FUND; BOARD OF TRUSTEES)
20 OF THE OPERATING ENGINEERS AND)
21 PARTICIPATING EMPLOYERS PRE-)
22 APPRENTICESHIP, APPRENTICE AND)
23 JOURNEYMEN AFFIRMATIVE ACTION)
TRAINING FUND; BOARD OF TRUSTEES)
OF THE OPERATING ENGINEERS)
VACATION AND HOLIDAY PLAN,)
Plaintiffs,)
v.)
DIAMOND OAKS CONSTRUCTION)
COMPANY, INC., A California Corporation,)
Defendant.)
PLAINTIFFS' APPLICATION FOR)
ORDER TO APPEAR FOR DEBTOR)
EXAMINATION)
Date:)
Time:)
Place:)

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25 // /
26 // /
27 // /

**WEINBERG, ROGER &
ROSENFIELD**
1001 Marina Village
Parkway, Suite 200
Alameda, CA 94501
(510) 337-1001

APPLICATION FOR ORDER TO APPEAR FOR EXAMINATION

TO: James S. Pelletier, Diamond Oaks Construction Company, Inc.

3 1. Plaintiffs, Ken Walters and John Bonilla, in their respective capacities as Trustees
4 of the Operating Engineers Health and Welfare Trust Fund for Northern California; Board of
5 Trustees of the Pension Trust Fund for Operating Engineers; Board of Trustees of the Pensioned
6 Operating Engineers Health and Welfare Fund; Board of Trustees of the Operating Engineers and
7 Participating Employers Pre-Apprenticeship, Apprentice and Journeymen Affirmative Action
8 Training Fund; Board of Trustees of the Operating Engineers Vacation and Holiday Plan
9 (hereinafter "Trust Funds" or "Plaintiffs"), Judgment creditors, make this application for an order
10 requiring Diamond Oaks Construction Company, Inc. to aid in the enforcement of the money
11 judgment against them entered on June 30, 2005 in the above-entitled Court, and to answer
12 concerning property and assets for the period of January 1, 2002 through December 31, 2003.

13 2. Plaintiffs request that Defendant Diamond Oaks, through its agent James S.
14 Pelletier, produce the following records to be examined:

- a. California Quarterly Report of Wages, For DE-6;
- b. Federal Tax Forms W-3 and W-2;
- c. 1096 and 1099 Forms;
- d. Workers Compensation Insurance Reports;
- e. Quarterly Payroll Tax Returns (Form 941);
- f. Check registers and supporting cash vouchers;
- g. General ledger (portion relating to payroll audit);
- h. Payroll Registers/Journals;
- i. Individual Earnings Records;
- j. Timecards for all employees;
- k. All time cards for employees who are Operating Engineers or who are performing the type and kind of work covered by the collective bargaining agreement;
- l. All payroll records consistent with item k;

1 m. Contribution Reports for all Trust Funds;
2 n. Cash disbursements ledger;
3 o. Accounts payable ledger; and
4 p. Vendor invoices.

5
6 Dated: November 21, 2005

7 WEINBERG, ROGER & ROSENFELD
8 A Professional Corporation

9 By: /s/Concepción E. Lozano-Batista
10 CONCEPCIÓN E. LOZANO-BATISTA

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EXHIBIT B

1 BARRY E. HINKLE, Bar No. 071223
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6 Attorneys for Plaintiffs

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10

11 KEN WALTERS and JOHN BONILLA, in their) No. C 04 – 04993 (FMS)
12 respective capacities as Trustees of the)
OPERATING ENGINEERS HEALTH AND)
WELFARE TRUST FUND FOR NORTHERN)
13 CALIFORNIA; BOARD OF TRUSTEES OF) [PROPOSED] ORDER FOR
THE PENSION TRUST FUND FOR) APPEARANCE AND EXAMINATION
14 OPERATING ENGINEERS; BOARD OF) OF DEBTOR ASSETS
TRUSTEES OF THE PENSIONED)
15 OPERATING ENGINEERS HEALTH AND)
WELFARE FUND; BOARD OF TRUSTEES)
16 OF THE OPERATING ENGINEERS AND)
PARTICIPATING EMPLOYERS PRE-)
17 APPRENTICESHIP, APPRENTICE AND)
JOURNEYMEN AFFIRMATIVE ACTION)
18 TRAINING FUND; BOARD OF TRUSTEES)
OF THE OPERATING ENGINEERS) Date:
19 VACATION AND HOLIDAY PLAN,) Time:
20 Plaintiffs,) Place:
21 v.)
22 DIAMOND OAKS CONSTRUCTION)
COMPANY, INC., A California Corporation,)
23 Defendant.)
24

25 ///

26 ///

27 ///

28

WEINBERG, ROGER &
ROSENFIELD
1001 Marina Village
Parkway, Suite 200
Alameda, CA 94501
(510) 337-1001

1 **PROPOSED ORDER FOR APPEARANCE AND EXAMINATION OF DEBTOR ASSETS**

2 TO: James S. Pelletier, Diamond Oaks Construction Company, Inc.

3 **YOU ARE HEREBY ORDERED TO APPEAR** personally before ~~this Court, or~~ before a
4 Magistrate ~~referee~~ at the time and place designated by the assigned Magistrate Judge
5 appointed by the Court, on _____, 2005, at _____ in Courtroom _____, —
6 Floor, located at 450 Golden Gate Avenue, San Francisco, California, to furnish information to aid
7 in enforcement of the judgment entered against you on June 30, 2005 and to answer questions
8 concerning property in your possession or control as stated in Plaintiffs' Application for Order to
9 Appear for Debtor Examination, attached hereto as Exhibit "A".

10 Dated: November 30, 2005



11
12 UNITED STATES DISTRICT JUDGE

13 107622/397838

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